IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Criminal Revision No.2068 of 2006
Date of Decision: October 12, 2006

Bawa Singh.

.....PETITIONER(S)

VERSUS

State of Punjab.

.....RESPONDENT(S)

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CORAM:- HON'BLE MR. JUSTICE AJAI LAMBA

PRESENT:- Mr. Pankaj Bhardwaj, Advocate, for the petitioners.

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AJAI LAMBA, J. (Oral)

This is a revision petition directed against Order dated 31.8.2006 passed by the Judicial Magistrate Ist Class, whereby an application of the accused for discharge has been dismissed.

Gist of the case is that FIR bearing No.95 dated 21.6.1995 was lodged at the instance of the petitioners under Sections 392, 457 and 342 IPC. Subsequently, it seems that on secret information, the petitioners themselves were reported to be the offenders and therefore, a raid was conducted on 22.6.2005 wherein heavy recoveries were made. The final report under Section 173 (2) Cr.P.C. was presented in Court against the petitioners on 10.9.2005. Having considered the material available on the

final report, charge was framed against the petitioners on 13.1.2006.

It seems that an application for further investigation was made whereupon the police filed supplementary challan under Section 173(8) Cr.P.C. on 25.5.2006 wherein, the petitioners have been exonerated. On the basis of the supplementary challan, an application for discharge has been filed. The Judicial Magistrate Ist Class has considered the matter and the relevant portion of the order reads thus:-

> "..... Merely because after presentation of challan u/s 420/182/120-B IPC, the accused/applicants have succeeded in moving the local police to present a report u/s 173 (8) Cr.P.C. in itself cannot be the sole ground to discharge them especially when a charge u/s 182 r/w 120-B IPC stands framed against all accused/applicants vide order dated 13.1.2006. Although, when the police want to conduct further investigation, it does not need any express permission from this court, but under the guise of conducting further investigation, the police cannot enable itself in conducting fresh or denovo investigation. No reason has been explained as to what made the police to record fresh statement/s of accused and some of their neighbourers to reach a conclusion regarding their innocence. It has nowhere been mentioned in the supplementary report as to what has been done with the original

allegations of applicant Bawa Singh when after reporting occurrence of robbery at his house, he succeeded in moving the police by getting an FIR No.95 of 21.6.1995 lodged against some unknown persons at Police Station, Sarabha Nagar, Ludhiana. Measured from this angle, it appears that a fresh investigation was conducted by the police so that this time it may give a favourable verdict in favour of accused/applicants. As per the original version of applicant Bawa Singh, the unidentified assailants looted a licensed revolver of his son Balwinder Singh and they decamped from the scene of occurrence in his own UNO Car No.Pb-10AM-4690. It was further reported that those unidentified assailants also took away two bags containing currency notes of Rs.26 lacs and Rs.11,20,000/- as well as one brief case containing currency notes of Rs.6 lacs. In this way, besides robbery of a licensed Revolver, a car and currency notes, worth Rs.43,20,000/- was reported to the police, which made the police to immediately recorded an FIR u/s 392/457/342 IPC, but during the investigation, especially on 22.6.2005, the police recovered the aforesaid black coloured bag containing currency notes worth Rs.26 lacs from the possession of accused/applicant Bawa Singh himself.

On the same day, another bag and brief case, which were allegedly taken away by the accused from the house of accused/applicant Bawa Singh were also recovered from the possession of accused/applicant Balwinder Singh and the said bag and brief case contained a total sum of Rs.17,20,000/-. As it was concluded by the police that complainant Bawa Singh in connivance with his co-accused had mislead the police for some oblique purpose, hence, instead of proceeding against those unknown and unidentified accused person, a challan u/s 420/182/120-B IPC was presented against Bawa Singh, his family and servants and after hearing ld. APP and learned defence counsel, vide order dated 13.1.2006, a charge/notice of accusations u/s 182 r/w 120-B IPC was framed against all accused/applicants. If, in the light of said investigation and evidence collected by the police, the supplementary report is considered, it would amount to letting the police to pass on a supplementary report, which is a result of fresh investigation and, which is not permitted by law. Hon'ble Apex Court in re:- K. Chander Shekhar Vs. State of Kerala, reported in AIR 1998, Supreme Court, page 2001, has laid down that once investigation is complete and the police submits report u/s 173 (2) Cr.P.C. after

> submission of report, although police has a right to further investigate u/s 173 (8) Cr.P.C., but it has no right for fresh investigation or re-investigation and that investigating agency cannot forward a fresh report to Magistrate after submitting a report u/s 173 (2) Cr.P.C. Hon'ble Apex Court in re:- H.S. Bains, Director Small Saving Cum Deputy Secretary, Finance, Punjab, Chandigarh Vs. State (Union Territory, Chandigarh), reported in 1980(4) SCC, page 631 has laid down that even if the police report suggests that case against accused is not made out and must be dropped, the Magistrate may disagree with the report and can take cognizance of offence u/s 190(1)(b). Our own High Court has laid down that report of police is not final word. Magistrate can proceed against accused of his own if he find substance in the allegations."

Learned counsel for the petitioners has addressed arguments on the basis of the supplementary report. Perusal of relevant portion of the impugned order noticed above does not reflect any illegality or impropriety in the order.

There is no merit in the petition which is accordingly dismissed.

(AJAI LAMBA)
JUDGE

OCTOBER 12, 2006
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